

**JOHN P. VISOCKSKY**  
Claimant

**ALLIED CONCRETE CONSTRUCTION**  
Respondent

**AMERICAN FAMILY MUTUAL INSURANCE CO.**  
Insurance Carrier

Based upon the evidence presented and for the purpose of preliminary hearing, the Appeals Board finds as follows:

The Appeals Board finds for preliminary hearing purposes the Order of Assistant Director Avery should be affirmed. The parties agree the key issue in this matter deals with the date of claimant's accidental injury. If claimant suffered accidental injury in October 1995 then a written claim of February 18, 1997, would be well outside the one-year time limit set by K.S.A. 44-527. If, in the alternative claimant's accidental injury was a series of injuries from October 1995 through April 22, 1996, then the failure to file an accident report by respondent would allow the one-year statute of limitations under K.S.A. 44-527 to make claimant's written claim timely.

Claimant testified to minor incidents which caused his back to flare up on October 12, 1995. One incident, in particular, when he was twisting and bending and putting concrete into a bucket, seemed to cause his symptoms to worsen. He also testified that continuing to work through October, November, and December 1995 caused his back to worsen. When claimant returned to work with respondent in March 1996 his condition worsened to the point where, on April 22, 1996, he was advised by his employer, who was also his brother, that he could no longer be employed until such time as he sought medical care and received appropriate treatment for his injuries.

The Appeals Board finds, for the purpose of preliminary hearing, that claimant suffered a series of injuries beginning in October 1995 and extending through April 22, 1996, when he left work to obtain medical treatment. While certain incidents appeared to contribute to claimant's injury, it also appears that the daily activities of concrete finishing were, in part, responsible for the worsening of claimant's back problems. In finding claimant's accidental injury occurred through April 22, 1996, the Appeals Board also finds that the written claim of February 18, 1997, was timely pursuant to K.S.A. 44-520a.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Order of Assistant Director Brad E. Avery dated April 18, 1997, should be, and is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of June 1997.

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BOARD MEMBER

c: Robert W. Harris, Kansas City, KS  
Joseph R. Ebbert, Kansas City, KS  
Office of Administrative Law Judge, Overland Park, KS  
Philip S. Harness, Director